

AMENDMENT TRANSMITTAL**PATENT**

Application No.: 10/038,142
Filing Date: 10/22/01
First Named Inventor: Tabatabai, et al.
Examiner's Name: Bengzon, G.
Art Unit: 2144
Attorney Docket No.: 80398.P433

- ☐ An Amendment After Final Action (37 CFR 1.116) is attached and applicant(s) request expedited action.
☒ Charge any fee not covered by any check submitted to Deposit Account No. 02-2666.
☒ Applicant(s) hereby request and authorize the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 CFR 1.16 and 1.17, for any concurrent or future reply to Deposit Account No. 02-2666.
☐ Applicant(s) claim small entity status (37 CFR 1.27).

ATTACHMENTS

- ☐ Preliminary Amendment
☐ Amendment/Response with respect to Office Action
☐ Amendment/Response After Final Action (37 CFR 1.116) (reminder: consider filing a Notice of Appeal)
☐ Notice of Appeal
☐ RCE (Request for Continued Examination)
☐ Supplemental Declaration
☐ Terminal Disclaimer (reminder: if executed by an attorney, the attorney must be properly of record)
☐ Information Disclosure Statement (IDS)
☐ Copies of IDS citations
☐ Petition for Extension of Time
☐ Fee Transmittal Document (that includes a fee calculation based on the type and number of claims)
☐ Cross-Reference to Related Application(s)
☐ Certified Copy of Priority Document
☒ Other: Reply Brief Under 37 CFR §41.41 (5 pgs.)
☐ Other: _____
☐ Check(s) _____
☐ Postcard (Return Receipt) _____

SUBMITTED BY:

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
TYPED OR PRINTED NAME: Sheryl Sue Holloway
SIGNATURE: _____
REG. NO.: 37,850
DATE: JUNE 30, 2008
ADDRESS: 1279 Oakmead Parkway
Sunnyvale, CA 94085-040
TELEPHONE NO.: (408) 720-8300

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being deposited with the United States Patent and Trademark Office via electronic filing through the United States Patent and Trademark Electronic Filing System on:

June 30, 2008

Date of Deposit

Cheri Clinkenbeard

Name of Person Mailing Correspondence

C. M. Kimbia

Signature

June 30, 2008

Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:) Examiner: Bengzon, Greg C.
)
Tabatabai, et al.) Art Unit: 2144
)
Application No. 10/038,142) Confirmation No.: 7456
)
Filed: October 22, 2001)
)
For:)
DELIVERY OF MULTIMEDIA)
DESCRIPTORS USING)
ACCESS UNITS)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 C.F.R. § 41.41

This is a reply to the Examiner's supplemental Answer mailed May 14, 2008. Appellant respectfully submits the Examiner's rejection of claims 1-90 under 35 U.S.C. § 112, second paragraph cannot be sustained because Appellant has clearly defined the claim terms at issue in the application, and that the Examiner's rejection of claims 1-90 under 25 U.S.C. § 103 cannot be sustained because the Examiner has misinterpreted the prior art and Appellant's claimed elements.

I. Rejection under 35 U.S.C. § 112, second paragraph

Representative claims 1 and 6 were first rejected under § 112, second paragraph in an Office Action mailed September 18, 2006. In response, Appellant amended the claims to incorporate definitions of the terms "access unit" and "fragment update" from the specification and cited paragraphs in the application for the definitions to support the amendment. In the final Office Action mailed February 21, 2007, the Examiner

maintained the rejection and added boilerplate language that did not particularly rebut Appellant's arguments that the terms were clearly defined. On May 18, 2007, Appellant requested pre-appeal review of the § 112 rejection. The pre-appeal panel decision mailed July 30, 2007 required Appellant to bring the issue before the Board but provided no explanation of why the panel decided Appellant's arguments were insufficient to overcome the § 112 rejection.

In the Appeal Brief, Appellant again cited specific sections of the application that define the claim terms and provided substantive arguments that the definitions of the claim terms are sufficiently clear in the specification so that one of skill in the art would interpret the claim terms as defined. Appellant expected the Examiner's Answer would provide some counter arguments to aid the Board in their decision and which would help Appellant determine whether to continue with the appeal. However, the Examiner's Answer merely repeats the exact rejection used in the final Office Action and makes no attempt to rebut Appellant's arguments that the claim terms are clearly defined. Thus, Appellant respectfully submits the Examiner has not carried his burden to point out with particularity why Appellant's claims are indefinite under the § 112, second paragraph in light of the disclosure in the application and Appellant's arguments.

One conclusion that can be drawn from the Examiner's continued failure to respond with particularity is that no cogent argument can be made against Appellant's position. Therefore, Appellant respectfully submits that Appellant's claim terms are defined with the amount of clarity required under § 112, second paragraph and the claims are not indefinite.

II. Rejections under 35 U.S.C. § 103

In rejecting representative claims 1 and 6 under § 103, the Examiner has misinterpreted both the prior art and Appellant's claimed elements.

Access unit

Appellant claims an access unit as being a network transmission data structure that comprises a fragment update. The Examiner is equating the image description record in Paek to Appellant's claimed access unit. On page 16 of the Examiner's Answer, the Examiner asserts that column 24, lines 5-15 of Paek discloses that a client computer can

receive digital data representing video content over a bidirectional communications port. Thus, it appears the Examiner is interpreting Paek's image description record as being the digital video content that is received by the client.

Paek's image description record describes video in terms of the objects contained in the video and stores the image description records in a database so that a user can search for video based on the objects it contains [Paek: column 17, lines 7-11]. There is no disclosure in Paek that teaches transmitting the image description record itself to a client. Because the image description records in Paek are used to find video that matches a user query, the digital data that is transmitted to a client should be interpreted as the matching video content. This interpretation is further supported by the incorporated-by-reference application incorrectly cited by the Examiner as application serial number 10/728435. The correct serial number is 09/432,769, now U.S. Patent 6,735,253. A system shown in Figures 12 and 13 of the '253 patent is described as allowing client to browse and edit digital video through a network. Thus, the '253 patent supports Appellant's interpretation that video images are transmitted to the client as digital data. Moreover, there is nothing in the '253 patent that even suggests that an image description record, such as described in Paek, is transmitted to a client as part of the browsing and editing function.

Therefore, Appellant respectfully submits the Examiner's assertion that Paek discloses Appellant's claimed access unit is clearly not supported by the teachings of the reference

Fragment update

Appellant claims a fragment update as comprising a fragment update command that specifies a type of command for execution by a decoder to update a multimedia description. Thus, it is clear the fragment update is used by the decoder to update a multimedia description. The Examiner asserts that a description within Paek's image description record is equivalent to Appellant's claimed fragment update. When Appellant pointed out that Paek does not teach that a description in an image description record can be used to update a multimedia description, the Examiner stated that he was relying on Paek as teaching the fragment update and on Vandersluis as teaching the function of the fragment update [Examiner's Answer: page 17].

Appellant respectfully submits that the Examiner has improperly parsed Appellant's claim to separate the fragment update from its function, resulting in an impermissible piecemeal reconstruction of Appellant's claim element from only those portions of the references that support the Examiner's argument. Because the Examiner admits that Paek's image description record does not perform the function of Appellant's claimed fragment update, Paek cannot be properly interpreted as teaching a element that functions as does the claimed fragment update. The Examiner's reliance on Paek as suggesting an updating process at column 2, lines 30-45 also fails to teach Appellant's claimed fragment update because one of skill would not consider a video editor to be the technical equivalent of a decoder.

Therefore, Appellant respectfully submits that the Examiner's assertion that Paek discloses Appellant's claimed fragment update is clearly not supported by the teachings of the reference.

Encoded data stream

Appellant claims forming an encoded data stream from the access unit. The Examiner asserts that Paek's document type definition is equivalent to the claimed encoded data stream because Paek and the '253 patent disclose a client-server system and thus the document type definition must be an encoded data stream [Examiner's Answer page 19]. Appellant can find no clear teaching in either Paek or the '253 patent that the document type definition is transmitted as an encoded data stream in the client-server system.

Moreover, bearing in mind that the Examiner is equating Paek's image description record with Appellant's claimed access unit, there is nothing in Paek or the '253 patent that even suggests creating a document type definition from an image description record. Instead, it is clear to one of skill in the art that Paek is using the document type definition as a schema that specifies the characteristics of the video objects that are described by the image description record. Thus, a proper interpretation of Paek is that the document type definition defines the descriptions that form the image description record, but that the document type definition itself is not formed from an image description record. Even assuming, *arguendo*, that one could interpret the document type definition as being formed from an image description record, the image

description record is not equivalent to Appellant's claimed access unit, so Pack cannot be properly interpreted as disclosing forming an encoded data stream from an access unit.

Therefore, Appellant respectfully submits that the Examiner's assertion that Pack and/or the '253 patent discloses Appellant's claimed encoded data stream is clearly not supported by the teachings of the references.

III. Conclusion

Appellant respectfully requests the Board reverse the rejections of claims 1-90 under 35 U.S.C. § 112, second paragraph and under § 103 for the reasons set forth above and in the Appeal Brief, and direct the Examiner enter a Notice of Allowance for the claims. In the event the Board reverses the § 112 rejection and remands the case to the Examiner for further prosecution, Appellant respectfully requests the Board instruct the Examiner to conform his interpretation of the prior art and the claims to those provided by Appellant here and in the Appeal Brief.

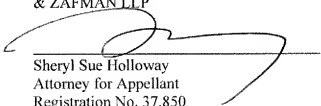
Deposit Account Authorization

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR
& ZAFMAN LLP

Dated: June 27, 2008



Sheryl Sue Holloway
Attorney for Appellant
Registration No. 37,850

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(408) 720-8300 x3476